

***THE HON'BLE SMT.JUSTICE T.MEENA KUMARI**

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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+ WRIT PETITION No.17676 OF 2005

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% TWENTY FIRST DAY OF SEPTEMBER, 2005

The Principal Secretary to Government (Poll.)

General Administration Department

Secretariat, Hyderabad ..Petitioner

Vs.

\$ G.Rameshwar

.. .Respondents

! Counsel for the writ petitioner: GOVERNMENT PLEADER FOR SERVICES-II

^ Counsel for the respondent: Sri P.V.Sanjay Kumar

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>Head Note

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THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION No.17676 OF 2005

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Dt: 21.09.2005

Between:

The Prl.Secretary to Government (Poll.)

General Administration Department
Secretariat, Hyderabad ... PETITIONER

AND

Sri G.Rameshwar
Section Officer
Energy Department
Secretariat, Hyderabad ... RESPONDENT

THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION No.17676 OF 2005

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ORDER: (per the Hon'ble Smt.Justice T.Meena Kumari)

This Writ Petition is filed by the petitioner-Department aggrieved by the Judgment dated 23.02.2005 in O.A.No.6157 of 2003 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad.

The above said O.A was filed by the respondent-applicant to direct the petitioner-Department to promote him as Assistant Secretary by holding the action of the petitioner-Department in denying him the promotion permanently on the ground that the respondent-applicant refused to join when he was promoted earlier to the said post as illegal and to set aside the Proceedings in Memo dated 25.05.2002 and also G.O.Ms.No.123 dated 14.03.2001.

It is the case of the respondent-applicant that he is working as a Section Officer in the Energy Department. While so, he was promoted as Assistant Secretary against a leave vacancy through G.O.Rt.No.4515 dated 14.10.2001, in which post, he did not join and that now, he is not being considered for promotion on the ground that his

right to promotion for the present and future has been forfeited to the post of Assistant Secretary under Rule 11(b) of A.P. State and Subordinate Service Rules (for short '**the Rules**') . It is his further case that the Government through G.O.Ms.No.145 dated 15.06.2004, amended Rule 11(b) of the Rules, as per which, in the event of any employee who does not join the promotional post within the stipulated period or evades to join the same by proceeding on leave, shall lose his promotion right/offer for the current panel year and the name of such candidate shall be placed before next Departmental Promotion Committee for consideration of his case in the next year panel subject to availability of vacancy.

The Tribunal after hearing the arguments of the learned Government Pleader appearing for the petitioner-Department as well as the learned counsel for the respondent-applicant, disposed of the said O.A. directing the petitioner-Department to place the name of the respondent-applicant before the review Departmental Promotion Committee for considering his case for promotion to the post of Assistant Secretary for the panel year 2003-2004 within a period of one month from the date of receipt of a copy of the order. Aggrieved by the same, the present Writ Petition has been preferred by the Department.

Learned Government Pleader appearing on behalf of the petitioner-Department has submitted that in the year 2001 itself, the respondent-applicant was promoted as Assistant Secretary and as he did not join in the said post, G.O.Rt.No.5467 dated 14.12.2001 was issued by the Government forfeiting the right of the respondent-applicant both present and future for appointment to the post of Assistant Secretary to Government and the said G.O. has become final. Now, the respondent-applicant has chosen to file the present O.A. seeking the benefit of G.O.Ms.No.145 dated 15.06.2004 through which an amendment has been made to Rule 11(b) of the Rules.

The said amendment reads as follows:

“(b) Time to join a post on appointment/temporary appointment under rule 10 including appointments by transfer or by promotion otherwise than by direct recruitment: A person on appointment/temporary appointment on adhoc basis under rule 10 including appointment by transfer or by promotion otherwise than by direct recruitment, shall be allowed a joining time of fifteen (15) days to join the post from the date of receipt of the order of appointment sent to the candidates by Registered Post with Acknowledgment due or by any other means. An employee who does not

join the post within the stipulated time or evades to join the post by proceeding on leave, shall lose his promotion right/offer for the current panel year and the name of the candidate shall be placed before the next Departmental Promotion Committee for consideration in the next year panel subject to availability of vacancy. In case of non-selection posts, the name of the candidate who does not join within the stipulated time in the promotion posts shall be considered for promotion again after a period of one year from the date of offer of appointment subject to availability of vacancy”.

Basing on the above amendment, learned Government Pleader has contended that the respondent-applicant having foregone the promotion in the year 2001, cannot have the benefit of the amendment to Rule 11(b) of the Rules in view of the fact that the amendment has come only on 15.06.2004 and since it would apply only to the future promotions and not to the persons who have foregone their promotions prior to the amendment.

The above contention has been repelled by the learned counsel appearing on behalf of the respondent-applicant on the ground that even though the respondent-applicant has foregone the promotion in the year 2001, the wordings of the G.O. makes it clear that an employee who could not join the promotion post can have the benefit of placing his name before the next Departmental Promotion Committee for consideration of his case in the next year panel subject to availability of vacancy.

With regard to the above contention, as the G.O. did not stipulate that the amendment is with retrospective effect, it has to be held that the amendment is only with prospective effect i.e. from the date of issuance of the G.O.

Under the above circumstances, we find no force in the contention of the learned counsel for the respondent-applicant that the respondent-applicant's case has to be considered for promotion to the post of Assistant Secretary by placing his name before the next Departmental Promotion Committee overlooking G.O.Rt.No.5467 dated 14.12.2001. In view of the fact that G.O.Rt.No.5467 has become final and since the amendment to Rule 11 (b) of the Rules has come into force only on 15.06.2004 without retrospective effect, we set aside the Order of the Tribunal and allow the Writ Petition.

(T.MEENA KUMARI, J)

(P.LAKSHMANA REDDY, J)

Dt: 21.09.2005

NOTE: LR copy to be marked

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